

U.S. COMMISSION ON CIVIL RIGHTS

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BUSINESS MEETING

UNEDITED

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FRIDAY, APRIL 15, 2016

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The Commission convened in Suite 1150 at 1331
Pennsylvania Avenue, Northwest, Washington, D.C. at
10:00 a.m., Martin R. Castro, Chairman, presiding.

PRESENT:

MARTIN R. CASTRO, Chairman

PATRICIA TIMMONS-GOODSON, Vice Chair*

ROBERTA ACHTENBERG, Commissioner*

GAIL HERIOT, Commissioner

PETER N. KIRSANOW, Commissioner

DAVID KLADNEY, Commissioner*

KAREN K. NARASAKI, Commissioner

MICHAEL YAKI, Commissioner*

MAURO MORALES, Staff Director

MAUREEN RUDOLPH, General Counsel

* *Present via telephone*

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STAFF PRESENT:

PAMELA DUNSTON, Chief, ASCD

JENNIFER CRON-HEPLER, Parliamentarian

ANGELA FRENCH-BELL

DARREN FERNANDEZ

LATRICE FOSHEE

SEAN GOLIDAY

GERSON GOMEZ

ALFREDA GREENE

MARCLE NEAL

JUANDA SMITH

LENORE OSTROWSKY, Acting Chief, PAU

COMMISSIONER ASSISTANTS PRESENT:

SHERYL COZART

ALEC DUELL

AMY GRANT

JASON LAGRIA

CARISSA MULDER

ALISON SOMIN

KIMBERLY TOLHURST

IRENA VIDULOVIC

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P-R-O-C-E-E-D-I-N-G-S

10:00 a.m.

CHAIRMAN CASTRO: I'm calling this meeting to order.

This is a meeting of the U.S. Commission on Civil Rights. This is our monthly business meeting.

Today is April 15, 2016. It's 10:00 a.m. Eastern Time. The meeting is taking place at our Headquarters in D.C. at 1331 Pennsylvania Avenue, NW.

This is Chairman Marty Castro. With me here at the Headquarters are Commissioners Kirsanow, Heriot and Narasaki. Joining us by phone are Vice Chair Timmons-Goodson and Commissioners Kladney, Achtenberg and Commissioner Yaki will be joining us by phone as well.

Currently a quorum of the Commission is present.

Is the court reporter present?

COURT REPORTER: Yes, sir.

CHAIRMAN CASTRO: Yes. And we have our Staff Director present?

STAFF DIRECTOR MORALES: Yes.

CHAIRMAN CASTRO: Okay. So the meeting will now come to order.

I. APPROVAL OF AGENDA

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1 CHAIRMAN CASTRO: The first item is the
2 approval of the agenda.

3 I move we approve the agenda.

4 Is there a second?

5 COMMISSIONER NARASAKI: I second.

6 CHAIRMAN CASTRO: Okay. Now I know we
7 have one amendment. I'm going to move that we amend
8 to defer consideration of the parallel construction and
9 the countering violent extremism letters.

10 I did get input from Commissioners --
11 written revisions or thoughts about the letters that
12 we're going to consider today. Those two are going to
13 need some additional work. So I will defer them to
14 another meeting.

15 So do I have a second on that?

16 COMMISSIONER NARASAKI: I second.

17 CHAIRMAN CASTRO: Okay.

18 Any other amendments to the agenda for
19 anybody?

20 (No audible response.)

21 CHAIRMAN CASTRO: Hearing none, all in
22 favor of the agenda as amended, signify by saying aye.

23 (A chorus of ayes.)

24 CHAIRMAN CASTRO: Pete and Gail?

25 COMMISSIONER KIRSANOW: We were just

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1 discussing something.

2 I'd also make a motion to defer
3 consideration of the North Carolina, et cetera letter
4 into the next month's meeting.

5 COMMISSIONER HERIOT: I'll second that.

6 CHAIRMAN CASTRO: Okay. Why don't we
7 vote on the amendment separately then?

8 COMMISSIONER KIRSANOW: Okay.

9 CHAIRMAN CASTRO: So the first amendment
10 we'll vote on is the removal or the deferral of the
11 parallel construction and CVE letter.

12 So as to that amendment, all those in favor
13 signify by saying aye.

14 (A chorus of ayes.)

15 CHAIRMAN CASTRO: Those opposed?

16 (No audible response.)

17 CHAIRMAN CASTRO: Any abstentions?

18 (No audible response.)

19 CHAIRMAN CASTRO: Did I hear an opposed?

20 (No audible response.)

21 CHAIRMAN CASTRO: Okay. So that passed
22 unanimously.

23 Now as to your motion to defer the North
24 Carolina letter that is regarding the LGBT and
25 religious liberty issues, is there any discussion on

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1 that?

2 COMMISSIONER KIRSANOW: Yes. I'll just
3 note that there are aspects of the letter that I think
4 merit a little bit further consideration.

5 For example, Commissioner Heriot and I
6 have certain disagreements about certain aspects of it.
7 And I think we might need a little bit more time -- all
8 of us -- to think about some of the components of the
9 North Carolina bill.

10 It was mentioned about either Tennessee,
11 Kansas and Mississippi bills. I do think we would
12 benefit from a little bit more deliberation on this.

13 I don't know that we're going to come to
14 an agreement on it. But there's a possibility that
15 maybe we can strike some type of a compromise on it
16 later.

17 VICE CHAIR TIMMONS-GOODSON: This is
18 Commissioner Timmons-Goodson.

19 I understand that the Governor issued an
20 Executive Order but did not address the "bathroom"
21 portion of the bill as such.

22 Are you aware of anything else,
23 Commissioner Kirsanow?

24 COMMISSIONER KIRSANOW: No, I'm not.
25 I do not, Vice Chair.

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1 CHAIRMAN CASTRO: Commissioner Narasaki?

2 COMMISSIONER KLADNEY: This is Kladney.

3 Is that what you're talking about,
4 Commissioner Kirsanow?

5 COMMISSIONER KIRSANOW: Yes. The North
6 Carolina bill in some respects -- in most respects --
7 overthrows what the City of Charlotte did in terms of
8 amending an ordinance related to discrimination on the
9 basis of a variety of things including gender and gender
10 expression in the use of restroom facilities and
11 showers.

12 There are a couple of components to that
13 ordinance that I think would be useful to drill down
14 a little bit further on those things. And I'm sure
15 you've read them, but it is at least arguable that what
16 the City of Charlotte did -- and I think it merits
17 further exploration -- is did they actually seek to
18 include private associations not open to the public
19 because they deleted that provision and also
20 religiously-affiliated institutions because they
21 deleted a reference to the YMCA, YWCA and other
22 institutions -- other similar institutions.

23 And there's some other working parts that
24 I think we may want to take a look at. The Kansas bill,
25 for example. North Carolina does permit a change in

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1 birth certificates for sex. Kansas doesn't. And
2 there are some other things with respect to
3 Mississippi, too.

4 I think before we issue a sweeping letter,
5 we may want to take a closer look at it.

6 CHAIRMAN CASTRO: Commissioner Narasaki?

7 COMMISSIONER NARASAKI: Commissioner
8 Kirsanow, you had referred to that Commissioner Heriot
9 may had maybe other thoughts. And so, it would be
10 helpful for me to understand sort of what Commissioner
11 Heriot is thinking.

12 COMMISSIONER HERIOT: There are a lot of
13 moving parts of this North Carolina statute. And one
14 way if you wanted to get something out earlier, we could
15 deal with everything except the North Carolina statute.
16 The North Carolina statute has some minimum wage
17 issues. It has all sorts of stuff in it. And
18 Commissioner Kirsanow and I actually disagree on what's
19 significant in the Charlotte ordinance.

20 To me what's significant in the Charlotte
21 ordinance is that it pretty clearly -- in my view --
22 outlaws any kind of restroom privacy facilities. Even
23 ordinary sort of men's and women's rooms seem to have
24 been forbidden by the Charlotte ordinance. And that's
25 something that needs to be sorted out.

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1 And while he's focusing on the public
2 private, I'm focusing on just the basic ability to have
3 separate restrooms, regardless of how one allocates
4 transgender.

5 And I think the minimum wage stuff is quite
6 significant and shows that this is a little different.
7 There are a lot of things going on in this bill that
8 are a lot different from what people think.

9 COMMISSIONER KIRSANOW: And if I could
10 raise one other thing, we had a hearing a year ago where
11 the definition of transgendered we were informed -- at
12 least in the minds of many of the advocates in the
13 community -- includes those who have anatomically
14 altered their sex, but also those with respect to gender
15 expression who've remained their biological birth sex
16 but seek to express themselves in a fashion different
17 than their sex at birth.

18 And when you look at the North Carolina
19 statute, it is -- well, I'm not sure it's unclear --
20 but I think it merits further examination as to what
21 they mean. As Gail indicated, it seems to completely
22 eradicate any distinctions based on male and female
23 bathrooms at all. And did they mean to do that? Is
24 that what it really means? I don't know.

25 CHAIRMAN CASTRO: Commissioner

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1 Achtenberg, I value your thoughts on the requested
2 delay.

3 COMMISSIONER ACHTENBERG: I think the
4 letter speaks for itself, Mr. Chairman. And I would
5 be inclined to have the Commission issue the letter as
6 drafted. If people want to propose amendments,
7 certainly obviously any work can be inclusive. But I
8 --

9 CHAIRMAN CASTRO: Okay. So what I'm
10 going to do then, I'm always happy to look for efforts
11 to find bipartisanship. My hope was to try to get some
12 comments and proposals before the meeting so that we
13 could discuss them today.

14 I would maybe still like to see if we could
15 do some wordsmithing during the meeting on this
16 proposal because I, too am, like Commissioner
17 Achtenberg inclined to move forward on the letter
18 today, particularly given that it is a very timely issue
19 right now. There are things that are happening at the
20 moment. And I think people want to hear from the Civil
21 Rights Commission as to where we stand on this emerging
22 issue at the moment.

23 So I'm going to vote on this amendment.

24 As we normally do, I do it by voice vote.

25 So I'm going to ask for this voice vote. If it's

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1 unclear, I'll ask for a roll call vote.

2 So all those in favor of the amendment
3 proposed by Commissioner Kirsanow, that is to delay the
4 letter, signify by saying aye.

5 (A chorus of ayes.)

6 CHAIRMAN CASTRO: I said in favor of.
7 Okay, in favor?

8 COMMISSIONER NARASAKI: No. I'm sorry.

9 CHAIRMAN CASTRO: Okay. Again.

10 All those in favor of the amendment --

11 COMMISSIONER NARASAKI: Too late.

12 CHAIRMAN CASTRO: Not that I know how
13 you're going to vote.

14 Let me say that again.

15 All those in favor of putting the letter
16 off -- Pete's motion -- signify by saying aye.

17 (A chorus of ayes.)

18 CHAIRMAN CASTRO: Those opposed say nay.

19 (A chorus of nays.)

20 CHAIRMAN CASTRO: Okay. A little
21 delayed.

22 Any abstentions?

23 (No audible response.)

24 CHAIRMAN CASTRO: In the opinion of the
25 Chair, the nays have it. So we will continue to have

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1 that on the agenda, and when we get to that perhaps we'll
2 see if we can do some wordsmithing. And if not, we'll
3 vote on the proposal anyway.

4 All right. So now that we've got our
5 agenda straightened out, let me move on the actual
6 agenda.

7 So we had for today a listing of a
8 discussion on concept papers and statutory enforcement
9 report for 2017. And just to kind of begin to think
10 about that, I think in particular -- well, I'll turn
11 the floor over to the Staff Director. Then I'll let
12 you know what my thoughts are.

13 Mr. Staff Director?

14 **II. BUSINESS MEETING PROGRAM PLANNING**

15 **Discussion on Commissioner Concept Papers and** 16 **Statutory Enforcement Report for 2017**

17 STAFF DIRECTOR MORALES: Thank you, Mr.
18 Chairman.

19 I just wanted to put this on the
20 Commissioners' radar because the interim director of
21 OCRE, Maureen Rudolph and I wanted to remind
22 Commissioners essentially that we're facing some tight
23 deadlines this year. As you know, there's a potential
24 that four Commissioners will not return after our
25 meeting in December. And while it's a little too early

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1 to know what the final makeup of the Commission will
2 look like after December 2016, we thought it would be
3 prudent to accelerate a discussion about the
4 presentation and consideration of a topic for the 2017
5 statutory report as well as selection of topics for the
6 Commission reports in 2017.

7 And 2017 may seem like a long way off, if
8 there's any chance to begin some work on the 2017
9 statutory report, we believe that if we're going to do
10 that, we probably have to have it done in October or
11 November of this year -- 2016.

12 So we just wanted to propose a couple of
13 discussion points for the Commissioners to consider,
14 one being a date for the potential circulation of
15 concept papers; two, a selection of date -- a meeting
16 date for the Commission to discuss these concept papers
17 and vote on the selection of a topic for the 2017
18 statutory report and the selection of 2017 Commission
19 Report topics; and then finally, perhaps a selection
20 date for potentially the 2017 statutory report
21 briefing.

22 So just three topics we wanted to kind of
23 put forward to you. I'm not saying that we need to make
24 any decisions right now. But we thought it would be
25 prudent because if we wait until July or August, it'll

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1 be too late. So I just wanted to put that on your
2 journal.

3 CHAIRMAN CASTRO: My thoughts are -- and
4 I've chatted with a few Commissioners about this well,
5 and they can all chime in their views as well -- but
6 I think that we definitely need to start thinking about
7 a timetable to put forward the statutory report because
8 that is obviously something that is mandated by
9 Congress that we do.

10 As to other concept papers, it seems to me
11 that we have a lot in the pipeline right now on existing
12 reports that are still being done that are going to be
13 sent to us in draft form -- and yes, Gail, I'll get to
14 you in a second -- that putting on additional or voting
15 on additional concept papers right now may be a little
16 premature, especially since we don't know yet what our
17 2017 budget is going to be. And that's going to be a
18 big driver as to what we can do and what we can't do
19 and how much we can do.

20 So in my mind, it's almost -- and half of
21 us are going to be gone, so I think what we're going
22 to be looking at in 2017 may be -- other than the
23 statutory report -- ought to be put off a little bit
24 until maybe there's new commissioners. Maybe not that
25 late, but nonetheless, the first we've got to do is the

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1 statutory report. The others seem to me to be a little
2 premature.

3 Gail?

4 COMMISSIONER HERIOT: I agree that other
5 kinds of briefings are premature. And that's what we
6 don't want to be doing.

7 But I do think we need to look ahead to 2017
8 because we're going to have a number of Commissioners
9 rotating off. There's always the possibility that the
10 incoming President or whoever the appointing authority
11 happens to be will be delayed in making that
12 appointment. And in January, we may not have a quorum
13 of Commissioners.

14 The last time we had this happening, we
15 scheduled briefings for those months knowing that if
16 we couldn't hold a business meeting because we didn't
17 have a quorum, we could still hold a briefing. And so,
18 putting off briefings for this year and instead
19 scheduling them for January, February, figuring that
20 we might not have a quorum otherwise, if the new
21 Commissioners come in and they want a different topic,
22 that would be fine. They could have a different topic.
23 But we would at least be able to keep the trains moving
24 by having some events in January and February, even if
25 the incoming President doesn't think appointing

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1 someone to this Commission is their first priority.
2 They may have other priorities -- perish the thought.

3 And so, I think it's a good idea to figure
4 that we will keep the calendar pretty clean in 2016 and
5 have the briefings then in early 2017, subject to new
6 Commissioners saying hey, that's not my topic. I want
7 a different topic. They could certainly do that if
8 they get appointed. But we don't want to just have
9 nothing going on during those months.

10 CHAIRMAN CASTRO: Any other comments from
11 Commissioners?

12 COMMISSIONER KLADNEY: Well, if you're
13 talking about having the statutory report then, you
14 should be talking about doing the hearing in 2016.

15 CHAIRMAN CASTRO: That's Commissioner
16 Kladney.

17 COMMISSIONER KLADNEY: I'm disappointed
18 with the fact that the number of hearings that we've
19 done this year and the product that's been produced --
20 right -- I understand the backlog. And I'm sure that
21 it's my understanding we'll be getting an estimation
22 of when that backlog is going to be knocked down.

23 However, with the budget, if we assume that
24 we're going to get about the same amount of money --
25 which I hope we get more -- but if you get the same amount

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1 of money, how many briefings can we do next year? Does
2 anybody have that number in mind?

3 CHAIRMAN CASTRO: No.

4 COMMISSIONER KLADNEY: No?

5 COMMISSIONER HERIOT: And we'll have
6 different Commissioners.

7 CHAIRMAN CASTRO: And as to the --

8 COMMISSIONER KLADNEY: Well, I --

9 CHAIRMAN CASTRO: Go ahead, Commissioner
10 Kladney.

11 COMMISSIONER KLADNEY: I'm not worried
12 about the new Commissioners coming on. They can do
13 what they want to do.

14 But I think we have an obligation to set
15 an agenda and speculate as to what we're going to be
16 able to do and what the Commission is going to be able
17 to do. Because the Commission continues regardless of
18 who's on it. And they can make their own decisions.
19 But we should be making plans and living up to our
20 obligations.

21 CHAIRMAN CASTRO: Commissioner Narasaki?

22 COMMISSIONER NARASAKI: I was going to say
23 that I think that the statutory hearing if we could do
24 it in 2016, it would be better in the new fiscal year
25 though because regardless of how the election turns

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1 out, there's a transition going on which means all the
2 agencies will also be going through transition. And
3 so the earlier we can get it done -- it'll be hard to
4 do a statutory hearing if we can't get government people
5 here to talk about their agency.

6 CHAIRMAN CASTRO: So do you suggest doing
7 the hearing in the 2016 fiscal year --

8 COMMISSIONER NARASAKI: No, I'm saying --

9 CHAIRMAN CASTRO: -- or calendar year?

10 COMMISSIONER NARASAKI: -- calendar year.

11 CHAIRMAN CASTRO: Calendar Year '16.

12 COMMISSIONER NARASAKI: In other words,
13 November or December while we still have people in place
14 who could actually help us out.

15 CHAIRMAN CASTRO: I see what you're
16 saying.

17 And also, Commissioner Kladney and other
18 Commissioners, I have talked to the interim head of OCRE
19 who is putting together a more specific timeline as to
20 the draft reports. And so she's going to make herself
21 available -- not today but sometime in the near future
22 to Commissioners that actually would be able to give
23 them a more specific timeline as to where these are in
24 the pipeline.

25 COMMISSIONER KLADNEY: Mr. Chairman?

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1 CHAIRMAN CASTRO: Yes, Commissioner
2 Kladney?

3 COMMISSIONER KLADNEY: I would also like
4 to add to my comment that I think that if we lay out
5 an agenda for fiscal year 2017, Congress can see that
6 we're moving forward rather than sitting still.

7 VICE CHAIR TIMMONS-GOODSON: This is Vice
8 Chair Timmons-Goodson.

9 I agree that we should proceed with a
10 statutory hearing during calendar year 2016. And if
11 it were up to me, we'd also get the report out because
12 it's my understanding --

13 (Laughter.)

14 VICE CHAIR TIMMONS-GOODSON: I
15 understand. I do. I understand the laughter. But my
16 understanding is if we don't have a quorum, we're not
17 going any time during 2017 or the first half of 2017,
18 then we're not going to be able to get the statutory
19 report anyway. And then how does that look?

20 CHAIRMAN CASTRO: Well, we wouldn't need
21 an approval quorum until closer to the end of fiscal
22 year 2017 on the statutory report. So I would hope that
23 by August of 2017 that whoever the President is would
24 have made some appointments.

25 I guess it's possible, not likely. So I

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1 think as it relates to the statutory report, we'll end
2 up being find on a quorum to approve it. But I think
3 Commissioner Narasaki is right about trying to get it
4 done in calendar year 2016 -- right -- get the briefing
5 done in calendar 2016 for the issue of quorum.

6 COMMISSIONER HERIOT: Particularly since
7 we have to pick the topic.

8 CHAIRMAN CASTRO: Right.

9 COMMISSIONER HERIOT: There's no way
10 around that.

11 CHAIRMAN CASTRO: Yes.

12 COMMISSIONER HERIOT: And future
13 commissioners can't say that's not fair.

14 CHAIRMAN CASTRO: Yes. That's one of the
15 things they can't change because it's got to be done.

16 COMMISSIONER HERIOT: So we might as well
17 hold it in November or December.

18 CHAIRMAN CASTRO: Commissioner Narasaki?

19 COMMISSIONER NARASAKI: So, Gail has
20 confirmed for me that we could have briefings even
21 though we don't have a quorum. So my suggestion is
22 maybe we try to pick the statutory report and one or
23 two briefing reports because I assume we'll have
24 resources to do at least two. So we can line them up.

25 And then I suggest that all the

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1 Commissioners work because two of the four terming off
2 are Congressional, so not affected who wins the
3 Presidency although may be affected by what the
4 majorities are in the House and Senate.

5 But anyway, that we work on that. Because
6 then we could keep a quorum even if the President
7 doesn't --

8 COMMISSIONER HERIOT: Correct. A
9 January and February that we've scheduled.

10 COMMISSIONER NARASAKI: Right, right.

11 But I'm saying also work with the Congress
12 to make sure that the two Congressional appointees are
13 filled so that we don't lose quorum.

14 CHAIRMAN CASTRO: And just remember that
15 of the four that are terming off, it's all four
16 Democrats. So you will have a parody of two
17 conservatives and two progressive independents.

18 So in any event, you won't have a dispute
19 over the briefing or an issue. You'll be tied. Or
20 you'd have to convince one another which may work. For
21 four of the last five years, we were like that and we
22 worked things out. But you all weren't here. So it's
23 a unique challenge and a great opportunity for team
24 building.

25 Okay. So I think the sense we're getting

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1 here, Mr. Staff Director, is we definitely want to pick
2 a statutory enforcement topic and get that briefing
3 done in this calendar year. And we may want to pick
4 a topic or two for a concept paper -- a concept paper
5 topic for 2017. In the event that we don't have a
6 quorum, they can still do a briefing and at least move
7 things forward.

8 Am I capturing the sense of the Commission?
9 Is everyone on the phone okay with that?

10 (No audible response.)

11 CHAIRMAN CASTRO: So now we need to put
12 some dates around that.

13 STAFF DIRECTOR MORALES: Yes. If it
14 would be all right with the Chair and with the
15 Commissioners if I could work with the special
16 assistants -- if the interim director and I can work
17 with the special assistants -- maybe have a meeting next
18 week or the next week or two to kind of start putting
19 together --

20 CHAIRMAN CASTRO: A calendar?

21 STAFF DIRECTOR MORALES: -- yes, a
22 calendar and planning for it. And then that way we can
23 all be on the same page.

24 CHAIRMAN CASTRO: Okay.

25 STAFF DIRECTOR MORALES: If that would be

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1 all right with you?

2 CHAIRMAN CASTRO: It's fine with me.

3 Other Commissioners?

4 (No audible response.)

5 CHAIRMAN CASTRO: Okay.

6 STAFF DIRECTOR MORALES: Thank you.

7 CHAIRMAN CASTRO: All right. You're
8 welcome.

9 Now we get to the proposed statement on
10 North Carolina and the various states regarding the
11 recent laws that many of us believe are negatively
12 impacting the LGBT community.

13 **II. BUSINESS MEETING, PROGRAM PLANNING**

14 **Discussion and Vote on Commission Statement Concerning**
15 **North Carolina Law on LGBT Rights**

16 CHAIRMAN CASTRO: There were a couple of
17 changes I think that were made to the original version
18 that I circulated. And that new version has been
19 circulated since.

20 So I will entertain a motion on this. And
21 then we could open it up for discussion and possible
22 wordsmithing.

23 So is there a motion on this statement?

24 COMMISSIONER ACHTENBERG: So moved.

25 CHAIRMAN CASTRO: Commissioner

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1 Achtenberg, was that you?

2 COMMISSIONER ACHTENBERG: Yes.

3 CHAIRMAN CASTRO: Commissioner
4 Achtenberg moves.

5 Commissioner Narasaki, were you
6 seconding?

7 COMMISSIONER NARASAKI: Yes.

8 CHAIRMAN CASTRO: Okay. Now let's have
9 some discussion.

10 I know, Commissioners, I think what you're
11 indicating is a little more substantive. But is there
12 anything we could do here in terms of wordsmithing that
13 might garner some of your support today?

14 COMMISSIONER KIRSANOW: Thank you, Mr.
15 Chair.

16 I think that would be difficult on the fly
17 right now. There are a number of issues.

18 I mentioned the private establishment
19 issue. If you look at, for example, the ordinance that
20 had stricken the previous ordinance at Section 1259.
21 It strikes the Sections 2 and 3 dealing with YMCA, YWCA
22 and similar types of dormitory lodging facilities.

23 I'm not sure what that means. It's at
24 least arguable that that could include
25 religiously-affiliated dorms since we're talking about

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1 the Young Men's Christian Association. I have no idea.

2 In addition, number 3 says that it strikes
3 "establishment not in fact open to the public," -- "a
4 private club or other establishment not in fact open
5 to the public," strikes me as it's at least arguable
6 that someone could say that the purpose for which this
7 was stricken was to include those establishments in the
8 coverage of the ordinance.

9 And then what is the effect of the North
10 Carolina bill on this, et cetera? I think there are
11 a lot of moving parts as Gail -- or Commissioner Heriot
12 had indicated that I think need to be addressed in a
13 deliberate fashion. I don't think we can do that on
14 the fly.

15 In addition, it's a sweeping statement.
16 Commissioner Heriot and I, for example, have different
17 degrees of concern related to Kansas, for example.
18 With respect to Tennessee, there are a couple of
19 accommodations. There's an amendment to the Tennessee
20 bill, for example, that requires counseling services
21 to be provided unless the referral could be made or
22 there's an imminent danger of harm which seems to me
23 to be reasonable accommodations that is their
24 counseling services would be provided. And frankly,
25 I don't know why someone would want to be counseled by

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1 somebody who frankly doesn't want to counsel them based
2 on religious objections or sees their lifestyle as
3 being somehow objectionable. But nonetheless, those
4 types of accommodations are afforded.

5 So there are lot of things going on here.
6 And I don't know the implications of North Carolina.
7 Mississippi is one I have not really looked at in depth.
8 But this is something I think that requires a greater
9 review.

10 CHAIRMAN CASTRO: Thank you.

11 Again, I understand what you're saying in
12 terms of not being able to provide some wordsmithing
13 here because your concerns seem to go much more deeply
14 than editing here. And quite frankly, some of the
15 issues you raise are at the very heart of this.

16 So why is it even necessary for there to
17 be an accommodation on any of this because of someone's
18 sexual orientation? They shouldn't have to be
19 accommodated. The services should just be provided.
20 And I guess that's probably where we differ in terms
21 of coming to this issue.

22 And that's why I put this forward because
23 these are the same sorts of arguments that were used
24 by some back during the early days of the civil rights
25 movement to keep from segregating schools or to keep

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1 from serving people at the lunch counter or to keep from
2 being in the same waiting area because of religious
3 beliefs and religious concerns. And so, this is an
4 exception that would swallow the rule in my view.

5 So those are just my thoughts initially on
6 this.

7 Any other Commissioner? Commissioner
8 Narasaki?

9 COMMISSIONER NARASAKI: Well, I'm a
10 little concern also about the states not allowing
11 cities and other smaller jurisdictions to make some of
12 these choices.

13 CHAIRMAN CASTRO: Any other Commissioners
14 want to comment?

15 VICE CHAIR TIMMONS-GOODSON: Yes. This
16 is Vice Chair Timmons-Goodson.

17 There are a lot of questions with regard
18 to the North Carolina measure. And that is due as many
19 would offer you to a great degree because of the speed
20 with which the bill was fashioned without public
21 comment and just rushed through at night. And so,
22 there are some that argue that it could have been
23 cleaner, neater, better written, more understandable
24 if more time had been devoted and other ideas or
25 individuals were able to express their opinion.

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1 So I just wanted to put that out there.
2 There's a lot of concern about the measure and the fact
3 that not only did it address the Mecklenburg Study
4 issue, but it also made it impossible for other
5 localities to address the issue themselves.

6 CHAIRMAN CASTRO: Thank you, Madam Vice
7 Chair.

8 Now the Commissioners on the phone, when
9 you're not speaking, if you could mute your phone.
10 We're getting some kind of a weird feedback. We'll see
11 if that has something to do with it.

12 Commissioner Heriot?

13 COMMISSIONER HERIOT: I just wanted to
14 agree with the Vice Chair that it would be a lot better
15 in this world if state legislatures, Congress and
16 everybody else took a lot more time with bills of that
17 sort. I think that some of the problems with the North
18 Carolina bill could easily have been dealt with had
19 things moved a little slower.

20 In fairness however, this is a response to
21 the Charlotte ordinance which was itself I think very
22 poorly done. And as I've said, if you take that
23 ordinance literally, it prohibits separate bathrooms
24 for anybody, not just a transgender issue, but
25 basically mandates unisex bathrooms which I don't think

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1 would be a very popular idea in Charlotte.

2 CHAIRMAN CASTRO: Any other Commissioner
3 comments?

4 COMMISSIONER KIRSANOW: Mr. Chair?

5 CHAIRMAN CASTRO: Yes, Commissioner
6 Kirsanow.

7 COMMISSIONER YAKI: Commissioner Yaki --

8 CHAIRMAN CASTRO: Kirsanow and then who
9 was that?

10 Hold on a second.

11 COMMISSIONER YAKI: Commissioner Yaki.

12 CHAIRMAN CASTRO: Okay. Commissioner
13 Yaki --

14 COMMISSIONER KIRSANOW: Let Commissioner
15 Yaki.

16 CHAIRMAN CASTRO: Commissioner Yaki, and
17 then Commissioner Kirsanow.

18 COMMISSIONER YAKI: Commissioner
19 Kirsanow went first. So I'll wait.

20 COMMISSIONER KIRSANOW: Okay. Thank
21 you, Commissioner Yaki. And thank you, Mr. Chair.

22 For the reasons just mentioned, the Vice
23 Chair and Commissioner Heriot, Charlotte moved
24 quickly, North Carolina moved quickly and that's one
25 of the reasons why we're here today. I think it's

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1 better to get something right than fast.

2 I'm not sure that we can reach a consensus.
3 Given our track record, it's probably not going to be
4 the case. I'm always hopeful that we can. But even
5 if we can't, I would submit that we shouldn't follow
6 the lead of Charlotte or North Carolina or others who
7 have done things in a summary, non-deliberative
8 fashion. I think we should be deliberative because we
9 are the U.S. Commission on Civil Rights. We should try
10 to get it right, articulate a position that can stand
11 the test of time and isn't second guessed the way
12 everyone's second guessing all these other provisions.

13 CHAIRMAN CASTRO: Commissioner Yaki?

14 COMMISSIONER YAKI: Yes. I want to
15 actually directly address in some ways what
16 Commissioner Kirsanow just said and others.

17 It may be true that the hastily enacted
18 bills and these other states, a lot of it is driven by
19 the fact that there has been a very short legislative
20 calendar that requires them to move quickly, that part
21 of the problem with these statutes may be their haste.

22 On the other hand, what we're doing is
23 we're enacting a statute. We are stating a set of
24 principles that go toward the foundation of what it is
25 that we do. And that is the protection of civil rights.

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1 And if these states are acting in haste in
2 a way that jeopardizes and threatens and creates
3 infringements on civil rights, we have a responsibility
4 to speak out as quickly as we can, as forcefully as we
5 can so that people will pause and put the brakes on it.

6 We're not here to deliberate on the nature
7 of and wordsmithing of the statutes. What is clear
8 though is the intent behind these steps. An intent can
9 be anything from the statements made by public
10 officials, inciting these bills, in offering these
11 bills in the words that surround these bills. And that
12 intent is, in my opinion, one that goes against the
13 protection of the Constitution for civil rights of
14 people in this country.

15 And we have an obligation to act now. We
16 have an obligation to act fast because we need to say
17 to other states considering this that they need to put
18 the brakes on it, that they need to understand what it
19 is that they're doing and that people in this country
20 understand and are watching what they're doing.

21 CHAIRMAN CASTRO: Thank you, Commissioner
22 Yaki.

23 Any other Commissioner before I call this
24 vote?

25 Commissioner Narasaki?

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1 COMMISSIONER NARASAKI: So I just wanted
2 to ask a question of Commissioner Kirsanow.

3 So you've made the statement that you think
4 the bill was too sweeping. Can you tell me where
5 because I don't have the --

6 COMMISSIONER KIRSANOW: Sure. The
7 Tennessee bill, for example, again, the Tennessee bill
8 requires that counseling services be provided unless
9 there can be a referral made. Or actually, it's worded
10 in reverse.

11 If there can be a referral made, then the
12 counseling services that were to be otherwise rendered
13 by someone who has a religiously-based objection to it,
14 or in the other case where you've got an imminent danger
15 of harm to the person seeking counseling. Those are
16 two exemptions that to me seem to be -- and there be
17 disagreement here -- but the person is not going to be
18 denied counseling. It's that clear. You cannot deny
19 someone counseling if there's an imminent danger of
20 harm or there's no ability for referral. And that's
21 why I'm not sure why we include Tennessee in that.

22 Again, we had a peaceful co-existence
23 briefing with a question mark at the end of it. And
24 it seems to me that the question mark is superfluous
25 if we can't seek to reach an accommodation that

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1 satisfies the balanced concerns of each.

2 Gail has an issue with respect to Kansas,
3 also. And I'm not sure that we have an agreement on
4 this with respect to that. But Kansas, for example,
5 has a provision that says that you may not amend your
6 birth certificate to change your sex. There are other
7 states that do. North Carolina, for example, allows
8 that.

9 That's something that I think reasonable
10 people can disagree about, and I happen to disagree at
11 least in terms of degree with Commissioner Heriot on
12 it.

13 And the other thing is I think maybe the
14 Civil Rights Commission should look inward also before
15 we go about condemning folks with respect to restroom
16 issues. I know for example we've got two separate
17 restrooms that are designated way. And they're locked
18 -- separate-locked restrooms. And my key says
19 Commissioner Kirsanow, men's room. Well, I'm not sure
20 who made that designation on my behalf. But maybe we
21 should get our own house in order first, in addition
22 to which we have an unequal bathroom. I have it on good
23 authority that there aren't urinals -- I'm presuming
24 this -- in the ladies bathroom, but we have them in the
25 men's bathroom.

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1 So maybe we should get our whole house in
2 order first. But that's an aside. The fact is there
3 are certain issues with respect to private
4 associations, accommodations that I think is not
5 legitimately addressed in this particular statement.

6 COMMISSIONER NARASAKI: So I should
7 clarify.

8 So what I was interested in is in the
9 language whether there's something that could be
10 tinkered with if it's inaccurate, or --

11 CHAIRMAN CASTRO: No, I think they make
12 clear there's nothing they could tinker with.

13 COMMISSIONER NARASAKI: It sounds like
14 you just want to delete Tennessee and Kansas from the
15 statement. So I just wanted to understand that.

16 CHAIRMAN CASTRO: Yes.

17 COMMISSIONER KIRSANOW: No, I don't know
18 that there can be any tinkering.

19 CHAIRMAN CASTRO: Okay.

20 COMMISSIONER NARASAKI: Okay.

21 CHAIRMAN CASTRO: And by the way, maybe it
22 was someone that wrote on your key because my key for
23 the bathroom is blank.

24 COMMISSIONER KIRSANOW: Really?

25 CHAIRMAN CASTRO: If you never know what

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1 works. Ask your personal staff about that.

2 But I'm going to call the question at this
3 point. So I'm going to take a roll call vote.

4 Commissioner Kirsanow, how do you vote?

5 COMMISSIONER KIRSANOW: For reasons I
6 mentioned, I'll vote no.

7 CHAIRMAN CASTRO: Commissioner Heriot,
8 how do you vote?

9 COMMISSIONER HERIOT: I vote no.

10 CHAIRMAN CASTRO: Commissioner,
11 Narasaki, how do you vote?

12 COMMISSIONER NARASAKI: I vote yes.

13 CHAIRMAN CASTRO: Commissioner Kladney,
14 how do you vote?

15 COMMISSIONER KLADNEY: Yes.

16 CHAIRMAN CASTRO: Commissioner
17 Achtenberg, how do you vote?

18 COMMISSIONER ACHTENBERG: Yes.

19 CHAIRMAN CASTRO: Commissioner Yaki, how
20 do you vote?

21 COMMISSIONER YAKI: Aye.

22 CHAIRMAN CASTRO: Madam Vice Chair, how do
23 you vote? Madam Vice Chair?

24 VICE CHAIR TIMMONS-GOODSON: Yes. The
25 delay was because I was on mute.

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1 CHAIRMAN CASTRO: Right. I figured.

2 And I vote yes. So the motion passes with
3 one, two, three, four, five, six yeses and there's two
4 nos.

5 So thank you. We'll get this published in
6 the press as soon as possible.

7 COMMISSIONER HERIOT: What's our timeline
8 on that?

9 CHAIRMAN CASTRO: We can get this this
10 afternoon, perhaps? Or Monday at the latest?

11 COMMISSIONER HERIOT: You don't want to
12 send out a press release --

13 CHAIRMAN CASTRO: Monday?

14 COMMISSIONER HERIOT: -- on Friday
15 afternoon.

16 CHAIRMAN CASTRO: Monday. Monday.
17 Thank you.

18 **B. STATE ADVISORY COMMITTEE**

19 **Presentation by Nebraska SAC Chair on Report About the**
20 **Impact of State Law Denying State Services to**
21 **Individuals Who Cannot Present Documentation of Legal**
22 **Status**

23 CHAIRMAN CASTRO: Next as we've been
24 having from time to time, we have a report from one of
25 our state advisory committees. The gentleman has been

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1 on the phone since the beginning, so he's been able to
2 hear our meeting so far.

3 He's a good friend. Chairman Jonathan
4 Benjamin-Alvarado who chairs the Nebraska State
5 Advisory Committee. And he is here to talk to us about
6 some of the work that the Nebraska SAC has been doing,
7 in particular, their recent work on issues related to
8 the impact of a state law that is denying state services
9 to individuals who cannot present documentation of
10 legal status.

11 So with that, I'd like to welcome Chairman
12 Benjamin-Alvarado to our Commission meeting.

13 And Mr. Chairman, you have the floor.

14 CHAIRMAN BENJAMIN-ALVARADO: Good
15 morning, ladies and gentlemen. How's everyone doing
16 today?

17 CHAIRMAN CASTRO: Great. Thank you.

18 CHAIRMAN BENJAMIN-ALVARADO: Beautiful
19 day here in Nebraska.

20 Well, let me just go very briefly. I'm
21 going to run over the findings and then the
22 recommendations from our work and just as a kind of
23 brief overview.

24 We've conducted a study here in Nebraska
25 on the state-level immigration enforcement efforts.

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1 And what we focused on was a law that passed in 2009
2 known as LB403. And what the study was seeking to do
3 was to elicit testimony from advocate service
4 providers, immigration attorneys, federal official and
5 national experts in both local and state immigration
6 policy. And we specifically reached out to Nebraska
7 agencies -- state agencies -- that are charged with
8 verifying and validating access to rights by residents
9 here in the State of Nebraska. And in particular, we
10 were looking at the work that had been done through the
11 Nebraska Department of Health and Human Services.

12 The findings are basically that despite
13 the efforts to improve the accuracy of e-Verify and
14 safeguard against abuses, there's a lot of
15 discrepancies that may have a disparate effect based
16 purely on race, color and national origin. We do note
17 that there are errors in the system that are difficult
18 to correct. And so the burden lies fully on the
19 individuals that are impacted by this. And it's
20 unfortunate too that those individuals in many cases
21 are not knowledgeable about their rights and
22 responsibilities and being able to report abuses that
23 they indeed do occur.

24 What we were also able to ascertain through
25 the hearings was that there's similar problems with the

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1 state database, specifically as it relates to race,
2 color and national origin. And there was a lot of
3 difficulties in trying to ascertain the validity of the
4 data in many instances.

5 But what is unfortunate is that it also
6 poses challenges to the staff in the state that is
7 charged with interpreting the results if they're not
8 properly trained in both immigration and public
9 benefits law. And that seems to be the case, although
10 we were not absolutely clear on that.

11 What we did find out was that the data
12 regarding the state verification is inconsistent and
13 insufficient to fully assess its impact. And only one
14 state agency in Nebraska reported on the number of
15 initial non-confirmation as compared to the ultimate
16 number of individuals who were denied services. And
17 in the State of Nebraska, no agency reports on the time
18 frames for secondary verification. And there were no
19 reports on the costs associated with utilizing the
20 system.

21 What we also found is in many cases that
22 there was incomplete, missing and inaccurate data. So
23 it was really very difficult for us to ascertain civil
24 rights deprivations that may have resulted from the
25 implementation of this law here in Nebraska.

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1 Part of the problem is that there's a very
2 expansive definition on the books of public benefits
3 that are adopted under this legislation that excludes
4 many individuals, including those with deferred action
5 or children who are eligible for a special immigrant
6 juvenile status from being able to assess access the
7 benefits to which they're entitled.

8 There also seemed to be from our
9 perspective a lack of clarity regarding the distinction
10 between lawful presence and qualified aliens which in
11 many instances contribute to the confusion and
12 unnecessary restriction of benefits to those eligible
13 populations.

14 Under the Civil Rights Act, neutral
15 procedures and practices which demonstrate a disparate
16 impact on the basis of race, color and national origin
17 must have substantial legitimate justification. The
18 purported justification of LB403 is to ensure that
19 state taxpayers are not sending public money on
20 individuals who are not eligible for those services.

21 What we're concerned with is that there was
22 no evidence to suggest --

23 CHAIRMAN CASTRO: Mr. Chairman, we had a
24 little bit of a glitch there. Could you repeat your
25 last sentence or two?

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1 CHAIRMAN BENJAMIN-ALVARADO: Yes.

2 The panelists were concerned that there
3 was no evidence that suggests that abuse of the public
4 benefits was problematic before LB403's introduction,
5 and second, that the State does not collect the data
6 on the cost of implementation and cannot accurately
7 assess whether or not the program is achieving a
8 cost-effective benefit for taxpayers and that some of
9 the panelists concurred that it might be suggested that
10 LB403 may have been drafted with a biased intent raising
11 concerns regarding equal protection under the 14th
12 Amendment of the Constitution of the United States.

13 So from that, we came up with a set of
14 recommendations. And we were first concerned with the
15 matters related to discrimination or denial of equal
16 protection of laws, and secondarily upon matters of
17 mutual concern in the preparation of reports of the
18 Commission to the President and to the Congress.

19 In keeping with those responsibilities, we
20 advanced the following recommendations.

21 We strongly suggest that the Commission
22 should investigate civil rights impact of state and
23 local immigration-related enforcement efforts across
24 the country, including those in the areas of
25 employment, education and health services.

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1 Secondarily, that the Commission should
2 issue a formal request of the Department of Justice
3 Civil Rights Division, Office of Special Counsel
4 Immigration-Related Unfair Employment Practices to
5 investigate the impact of Nebraska's LB403 on equal
6 employment opportunities in the State of Nebraska.

7 The Commission should also issue a formal
8 request of the U.S. Department of Health and Human
9 Services Office of Civil Rights to investigate the
10 impact of the access to federally-supported healthcare
11 services and the potential disparate impact on the
12 basis of color, race and national origin.

13 Then we also suggested such an
14 investigation should focus primarily on programs and
15 services exempted from immigration status verification
16 under federal law.

17 We also recommend that the Commission
18 should issue a formal request of the U.S. Department
19 of Education Office of Civil Rights to investigate the
20 impact of this legislation on access to
21 federally-supported education programs such as
22 financial aid and federal student loans and the
23 potential disparate impact that it may have as well.

24 And finally, we recommend that the
25 Commission should issue a formal recommendation to

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1 USCIS urging the Agency to prohibit the use of the same
2 database to verify immigration status of applicants for
3 public programs which are exempt from such verification
4 under federal law.

5 So that's really the formal part of what
6 I have to present. And I'm open for questions, ladies
7 and gentlemen.

8 CHAIRMAN CASTRO: Thank you, Mr.
9 Chairman.

10 Are there any questions for the Chair?
11 Commissioner Narasaki?

12 COMMISSIONER KLADNEY: I'd just like to --
13 oh.

14 CHAIRMAN CASTRO: Commissioner Narasaki.
15 Then Commissioner Kladney.

16 COMMISSIONER NARASAKI: Thank you, Mr.
17 Chair.

18 I just wanted to commend the Nebraska SAC
19 for its excellent work. I have been working on
20 immigration issues for 20 years, and this is one of the
21 best versions of this kind of report that I've seen.
22 So really excellent job to the SAC and the staff who
23 worked on it.

24 I was particularly struck by the data that
25 at 2014 just 276 of the 5,484 individuals who initially

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1 failed the e-verification remained in failed status
2 after secondary verification. So there's a 95 percent
3 error rate. And that's just in one year in that state
4 -- that many individuals who potentially had their
5 employment or other benefits held up.

6 And I want to point out because I had a
7 former staff member who went to work for the then Chair
8 of the House Immigration Subcommittee. And she got
9 held up. She had immigrated as a child. She got held
10 up in the system. And it took her a month to clear her
11 status even though she was working for the Chair of the
12 House Immigration Subcommittee.

13 So this is not an easy thing to clear up
14 for people. And so I commend the SAC for taking this
15 issue up.

16 CHAIRMAN CASTRO: Thank you.

17 Commissioner Kladney?

18 COMMISSIONER KLADNEY: I just wanted to
19 ask did you find what the error rate was in the e-Verify?

20 CHAIRMAN BENJAMIN-ALVARADO: We were not
21 able -- nobody was able to provide us with that
22 information. It was rather frustrating as we went
23 through our deliberations and trying to actually get
24 hard data -- quantitative data -- error rates other than
25 anecdotes are on that. I don't have anything concrete

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1 to present you with. I'm sorry about that.

2 COMMISSIONER KLADNEY: Well, I was just
3 wondering and your conclusions about error rates in
4 that regard, how did you arrive at them?

5 CHAIRMAN BENJAMIN-ALVARADO: Well, when
6 we did ask -- when we were able to talk with the federal
7 officials, like I said, they only offered us broad
8 suggestions that there was indeed a very high error rate
9 that they were taking measures to address those
10 particular issues.

11 But like I said -- not that they were
12 evasive. They just didn't provide us with any
13 confidence that database in and of itself could be
14 reliable for making the types of verifications needed
15 or sought under any scenario.

16 And so, that's why we came out as strongly
17 as we did against it.

18 COMMISSIONER KLADNEY: So do you think
19 that at the national level they would be able to provide
20 those kinds of statistics of --

21 CHAIRMAN BENJAMIN-ALVARADO: I do believe
22 so. I know that there has been some work that's been
23 done on it. And I would hope that if they were
24 conducting a regular analysis of the use of data that
25 they would be able to provide that because I think it's

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1 important, not only in terms of ensuring that
2 individuals might have used the system but also to
3 ensure that no one's rights are being violated as a
4 consequence of utilizing that data to make those types
5 of assessments on verification.

6 COMMISSIONER KLADNEY: So if you would
7 pick the top five areas where you would like to know
8 the error rate, and the Departments that you'd like to
9 know them from, could you list them and perhaps you can
10 send them some correspondence to see if they could reply
11 and we can get a better handle on that?

12 CHAIRMAN BENJAMIN-ALVARADO: What I would
13 ask if we could be very direct about it is is there any
14 type of instruction that goes out from the federal
15 government that maintains these databases to the states
16 and local agencies that utilize them to make these types
17 of assessments, whether or not an individual is
18 qualified to receive state or federal benefits at any
19 level. That's always a tough nut to crack.

20 And I'm sensitive to the amount of work
21 that people in these agencies have to do. But I also
22 do believe that if someone is qualified for these
23 benefits that they should be able to receive them with
24 little or no kind of interference from the government
25 so long as they provided the adequate and requisite

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1 information to be eligible.

2 And for us, that was the issue in Nebraska.
3 Anecdotally, what had gone on here is that there were
4 some reports that individuals who were fully eligible
5 to receive benefits were not because of inherent
6 problems in the Nebraska Department of Health and Human
7 Services. And so, if there could be some sort of a
8 directive from the federal government to state and
9 local agencies on the proper utilization and usage of
10 these data sets, I think it would be the thing that would
11 make us probably feel best about all of this moving
12 forward.

13 COMMISSIONER KLADNEY: Thank you very
14 much.

15 CHAIRMAN CASTRO: Thanks.

16 COMMISSIONER KLADNEY: Good work.

17 CHAIRMAN CASTRO: Thank you.

18 Mr. Chairman, I think what we're going to
19 try to do here -- and I'll hand it over to you,
20 Commissioner Narasaki for your questions -- you make
21 I think it's a number of specific requests that the
22 Commission issue formal requests to various of the
23 departments. I'm going to ask my staff to prepare
24 letters to that effect for the Commission to review for
25 our consideration to follow up on these requests.

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1 And in terms of looking into the broader
2 issue of the impact of state and local immigration laws,
3 we actually did a hearing on that in 2012 on some of
4 the state laws there. We initially determined not to
5 issue a report and just post the transcript. But
6 indeed, we determined last year that we want to issue
7 a report. So staff, among the many drafts they're
8 working on right now, there is a draft that is going
9 to be prepared as to the state and local immigration
10 laws. And perhaps what we could do is refer this report
11 to our interim OCRE office to see how they might be able
12 to incorporate the work of the Nebraska SAC already done
13 into the work that the Commission has already been doing
14 on that issue.

15 So I'm going to propose that that we're
16 going to do on this front.

17 Commissioner Narasaki, you had some
18 additional questions?

19 COMMISSIONER NARASAKI: Yes. Thank you.

20 Just one more somewhat related to that
21 request.

22 So we did get appended to the report the
23 response from the Department of Health and Human
24 Services in Nebraska responding to some of the issues
25 that were raised by the report. And I'm wondering

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1 whether there are any of the responses that you take
2 issue with still in terms of what you thought was a
3 satisfactory response or whether it left some issues
4 still of concern to the SAC.

5 CHAIRMAN BENJAMIN-ALVARADO: Well, it did
6 leave some issues of concern to the SAC that it has much
7 more to do, not so much with the response but I guess
8 there's a context that I need to kind of make you aware
9 of.

10 The State Department of Health and Human
11 Services has been under fire from the federal
12 government for a number of discrepancies, both in the
13 manner in which it has implemented federal funding for
14 various programs in the State, so much so that the State
15 was compelled to return some of the funds from the
16 federal government back to Washington because of a lack
17 of oversight and appropriate accountability on issues,
18 especially as they relate to issues of child welfare.

19 That is still an issue that's being worked
20 through here in the State of Nebraska. And to be honest
21 with you, I was surprised that we even got a response
22 from them given the amount of fire that they've been
23 having to deal with on an ongoing basis. Like I said,
24 not just that branch alone. And public mental health
25 issues have also been a significant kind of scar on the

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1 reputation of Health and Human Services here.

2 And so, a lot of things have gone wrong and
3 we've gone through a revolving door of directors and
4 attempts on the part of the State to address many of
5 these issues. And this is yet another one.

6 And so, I think we did feel satisfied with
7 the response from HHS here in Nebraska. And so, we were
8 hoping that we could maybe come to it from another angle
9 so that there would be the kind of attention they paid
10 to the federal requirements. And then like I said,
11 being compelled to return funds because of the lack of
12 accountability, I think it would be clear to them that
13 this is yet another area where they have to respond to
14 both federal requirements, regulations, but also to
15 civil rights concerns.

16 CHAIRMAN CASTRO: All right.

17 Any other questions from Commissioners?

18 (No audible response.)

19 CHAIRMAN CASTRO: Hearing none, Mr.
20 Chairman, I want to thank you again --

21 COMMISSIONER YAKI: Sorry.

22 CHAIRMAN CASTRO: Go ahead.

23 Commissioner Yaki?

24 COMMISSIONER YAKI: I thank you very much.

25 I just wanted to thank the Chair for this

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1 report. And I also on a personal note make him know
2 that I have had the fortune of visiting Nebraska lately
3 but the last two months and two months I've been in
4 Lincoln a few times and Omaha. It's a beautiful state.
5 And just wanted to say thanks for the work that you're
6 doing and for the comprehensiveness of, as Commissioner
7 Narasaki said, of this report to the Commission.

8 CHAIRMAN BENJAMIN-ALVARADO: Well, thank
9 you very much. I appreciate it.

10 CHAIRMAN CASTRO: Mr. Chairman, again I
11 want to thank you again for accepting our invitation
12 to be the Chair of the committee and the work that you've
13 been doing and the leadership you're providing, not
14 only to us here at the SAC and at the Commission but
15 I know of all the other work that you're doing in the
16 community.

17 So please also give our regards and thanks
18 to the other SAC members for their service and for their
19 support.

20 CHAIRMAN BENJAMIN-ALVARADO: Thank you
21 very much. I appreciate that.

22 CHAIRMAN CASTRO: Thank you.

23 You're free to stay on and listen to the
24 last part of our meeting, if you want. Otherwise, we
25 will release you from your obligation to be on.

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1 Thanks.

2 CHAIRMAN BENJAMIN-ALVARADO: Very well.

3 Thank you, sir.

4 CHAIRMAN CASTRO: You're welcome.

5 Next and continuing on the state advisory
6 committee theme, we have a couple of SACs up for
7 appointment or re-appointment. So I am going to
8 proceed with those.

9 **III. STATE ADVISORY COMMITTEE (SAC) APPOINTMENTS**

10 **Maine and Georgia**

11 CHAIRMAN CASTRO: The first one is on
12 Georgia. So let me make a motion that the Commission
13 appoint the following individuals to the Georgia State
14 Advisory Committee based upon the recommendation of our
15 Staff Director: Gerardo Gonzales, Julius W. Dudley,
16 Joseph M. Knippenberg, Peter A. Lawler, John W. Mayes,
17 Jamala S. McFadden, Stephanie Woods Miller, Khafre
18 Abif, Laverne Gaskin, Chanel Haley, James McCrary,
19 Jeremy Kidd, Anne Lewis and John Park.

20 Pursuant to this motion, the Commission
21 reappoints Gerardo Gonzales as Chair of the Georgia
22 State Advisory Committee.

23 These members will serve as uncompensated
24 government employees.

25 Under this motion, the Commission

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1 authorizes the Staff Director to executive the
2 appropriate paperwork for the appointments.

3 Do I have a second? Is there a second?

4 COMMISSIONER KLADNEY: Second.

5 CHAIRMAN CASTRO: Okay. Thank you,
6 Commissioner Kladney.

7 Any discussion?

8 Commissioner Narasaki?

9 COMMISSIONER NARASAKI: So because we
10 really need to move on filling these vacancies, I will
11 support this. But I am concerned about the fact that
12 there is not an Asian American representative on this
13 SAC.

14 It's a four-year appointment. And this is
15 a state which has one of the fastest growing Asian
16 American communities, and in fact it has a fairly
17 significant Asian American community in the Atlanta
18 Metro Area.

19 So I'm concerned about that. I hope that
20 the staff will with the SAC to make sure that there's
21 adequate outreach to Asian American organizations.
22 And my staff and I will be happy to help them with that.

23 CHAIRMAN CASTRO: Thank you, Commissioner
24 Narasaki.

25 Anybody else?

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1 (No audible response.)

2 CHAIRMAN CASTRO: Anybody else?

3 (No audible response.)

4 CHAIRMAN CASTRO: Okay. Then I'm going
5 to call this for a vote.

6 Commissioner Heriot, how do you vote?

7 COMMISSIONER HERIOT: I vote yes.

8 CHAIRMAN CASTRO: Commissioner Kirsanow,
9 how do you vote?

10 COMMISSIONER KIRSANOW: Yes.

11 CHAIRMAN CASTRO: Commissioner Narasaki,
12 how do you vote?

13 COMMISSIONER NARASAKI: Yes.

14 CHAIRMAN CASTRO: Commissioner Kladney,
15 how do you vote?

16 COMMISSIONER KLADNEY: Yes.

17 CHAIRMAN CASTRO: Commissioner
18 Achtenberg, how do you vote?

19 COMMISSIONER ACHTENBERG: Yes.

20 CHAIRMAN CASTRO: Commissioner Yaki, how
21 do you vote?

22 COMMISSIONER YAKI: Aye.

23 CHAIRMAN CASTRO: Madam Vice Chair, how do
24 you vote?

25 VICE CHAIR TIMMONS-GOODSON: Yes.

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1 CHAIRMAN CASTRO: And I vote yes, so
2 unanimously, this slate passes.

3 I now move on to Maine.

4 I make a motion that the Commission appoint
5 the following individuals to the Maine State Advisory
6 Committee based upon the recommendation of our Staff
7 Director: Jennifer A. Bailey, William D. Baker,
8 Maurice R. Gilbert, Diane A. Khiel, Judith D. Jones,
9 Stephen J. Meardon, Eric M. Mehnert, Michael R.
10 Montgomery, Phillipe J. Nadeau, Joseph R. Reisart, Paul
11 S. Robinson, Rachel Talbot-Ross, Carl M. Toney,
12 Akintoye Akinjiola, Muidin Liebah and Ian Yaffe.

13 Pursuant to this motion, the Commission
14 appoints Diane A. Khiel as Chair of the Maine State
15 Advisory Committee.

16 These members will serve as uncompensated
17 government employees.

18 Under this motion, the Commission
19 authorizes the Staff Director to execute the
20 appropriate paperwork for the appointments.

21 Is there a second? Second?

22 COMMISSIONER ACHTENBERG: Second.

23 CHAIRMAN CASTRO: Thank you, Commissioner
24 Achtenberg.

25 Any discussion?

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1 (No audible response.)

2 CHAIRMAN CASTRO: Hearing none, I'll call
3 for a vote.

4 Commissioner Heriot, how do you vote?

5 COMMISSIONER HERIOT: I'm going to vote
6 for the slate, but I think I may have something I'd like
7 to mention to you at a later date --

8 CHAIRMAN CASTRO: Okay.

9 COMMISSIONER HERIOT: -- about this.

10 CHAIRMAN CASTRO: All right.

11 Commissioner Kirsanow, how do you vote?

12 COMMISSIONER KIRSANOW: Yes.

13 CHAIRMAN CASTRO: Commissioner Narasaki,
14 how do you vote?

15 COMMISSIONER NARASAKI: Yes.

16 CHAIRMAN CASTRO: Commissioner Kladney,
17 how do you vote?

18 COMMISSIONER KLADNEY: Yes.

19 CHAIRMAN CASTRO: Commissioner
20 Achtenberg, how do you vote?

21 COMMISSIONER ACHTENBERG: Yes.

22 CHAIRMAN CASTRO: Commissioner Yaki, how
23 do you vote?

24 COMMISSIONER YAKI: Aye.

25 CHAIRMAN CASTRO: Madam Vice Chair, how do

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1 you vote?

2 VICE CHAIR TIMMONS-GOODSON: Yes.

3 CHAIRMAN CASTRO: And I vote yes. We have
4 another unanimous passage. The slate is now
5 confirmed. Thank you.

6 We now move on to Management and
7 Operations. And I give the floor to the Staff Director
8 for his report which will be the -- well, go ahead --
9 I believe the next item on the agenda.

10 MANAGEMENT AND OPERATIONS

11 **Staff Director's Report**

12 STAFF DIRECTOR MORALES: Thank you, Mr.
13 Chairman. I appreciate it.

14 In addition to the report which you have,
15 of course, I have two things I'd like to mention and
16 bring to your attention.

17 One is that we are currently interviewing
18 in the last part of interviewing process for a public
19 engagement staff member that we were hoping to select
20 here fairly quickly in the next few weeks, make an
21 offer. And so I wanted to update the Commissioners on
22 that.

23 And second, I know there's been some
24 interest from Commissioners and their Special
25 Assistants about the proposed changes to the SAC

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1 appointments and SAC process. And so, I just wanted
2 to let folks know that we received several comments and
3 suggestions from staff, from Commissioners and from
4 Special Assistants.

5 In addition, we've received a couple of
6 requests from Commissioners to meet with us to express
7 their ideas in person.

8 David Mussatt who is the regional
9 coordinator for the State Advisory Committees is away
10 on vacation next week until the 25th. Once he returns,
11 we'll finish our conversations with the Commissioners
12 and then we're hoping create a memo that we can lay out
13 the recommended changes or some of the proposed ideas.
14 And at that point, we can share that information with
15 Commissioners and Special Assistants and then find a
16 way to prepare a package or finalize the idea for
17 approving the SAC selection process, the SAC movement
18 utilizing SACs as well.

19 So that's what I have, Mr. Chairman.

20 CHAIRMAN CASTRO: Okay.

21 Any questions?

22 Commissioner Narasaki?

23 COMMISSIONER NARASAKI: I just actually
24 want to commend the staff. The Chair, Vice Chair and
25 I had the opportunity to go down to the North Carolina

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1 State Advisory Committee hearing on environmental
2 justice. And it was really a very productive, very
3 moving hearing. I'm only said that the rest of the
4 Commissioners weren't able to participate.

5 I particularly wanted to comment both
6 David Mussatt but also Jeffrey Hinton who's the
7 regional coordinator as well as Corrine Saunders who
8 is wanted from another region in order to provide
9 administrative support.

10 It was extremely well done, and I think
11 very fruitful input into our Maine report. So just
12 really want to thank staff and commend them.

13 CHAIRMAN CASTRO: Thank you, Commissioner
14 Narasaki. I agree with you completely on that.

15 Any other questions or comments on the
16 report from the Staff Director?

17 COMMISSIONER NARASAKI: Oh, I should also
18 commend the Chair -- sorry --

19 CHAIRMAN CASTRO: That's okay.

20 COMMISSIONER NARASAKI: -- of the State
21 Advisory Committee.

22 CHAIRMAN CASTRO: Maddie's great.

23 COMMISSIONER NARASAKI: She did an
24 amazing job because they did have almost two hours of
25 open mic which is always difficult to facilitate

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1 particularly on something so emotionally charged. And
2 she did a really incredible job.

3 STAFF DIRECTOR MORALES: Thank you,
4 Commissioner Narasaki. I think it's a good example of
5 when the Headquarters office can collaborate with the
6 State Advisory Committees and utilize their expertise
7 in local communities and providing us with information.

8 So thank you.

9 CHAIRMAN CASTRO: Any other Commissioners
10 wish to say anything?

11 (No audible response.)

12 CHAIRMAN CASTRO: Okay. I want to before
13 I adjourn the meeting let some Commissioners know and
14 others remind them because I've let some folks know in
15 advance already that I will be out of the country at
16 our next meeting on May 20th where we're going to have
17 a hearing. So in my absence, the Vice Chair will be
18 chairing the briefing. I know you'll all be nice to
19 her. But she doesn't need that. She'll run a good
20 meeting.

21 So I just wanted to let you know so no one's
22 surprised when I don't show up at the next meeting. Our
23 Vice Chair will be running that briefing.

24 And that is all the business we have. So
25 I hereby adjourn the meeting at 11:06 Eastern Time.

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Thank you.

(Whereupon, at 11:06 a.m., the
above-entitled matter was concluded.)